IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 849 (M/S) of 2003

Sher Singh ……... Petitioner

Versus

District Judge,
Udham Singh Nagar and others …… Respondents.

……

Sri Sudhir Singh, learned counsel for the petitioner.
Mrs. Deepa Mehta, learned counsel for the State.

Hon.Rajesh Tandon J.

1. By the present writ petition, the petitioner has challenged the order dated 9.7.1996 passed by the Appellate Court by which the Appellate Court had directed to vacate the land within a period of three months.

2. Briefly stated facts are that notice under section 4(1) of the U. P. Public Premises (Eviction of Unauthorized) Occupants, Act, 1972 in respect of Khasra No. 48/3, area 1 Bigha, was initiated. The petitioner filed objection stating therein that he is possession over the land since last 25 years and the Act does not apply to the disputed plots. On the 3.4.1992, an eviction order was passed against the petitioner on the basis of Challani report. Aggrieved by the same, the petitioner approached the Appellate Court stating therein that no notice was served upon the petitioner and as such the entire proceedings were illegal. The appeal has been decided against the petitioner. Therefore, the petitioner has filed the present writ petition.

3. Section 4 (1) of the U.P. Public Premises (Eviction of Unauthorized) Occupants, Act, 1972 provides as under:

> **“ 4. Issue of notice to show cause against the order of eviction.-**
> (1) If the prescribed authority either of its own motion or on an application or reports received on behalf of the State Government or the corporate authority, is of the opinion that any person are in unauthorized occupation of any public premises and that they should be evicted, the prescribed authority shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.”

3. As will appear from the aforesaid provision that before initiating the proceedings, notice should have been issued to all the persons against whom eviction has been sought. In the Appellate Court, the petitioner had submitted that no notice has been served upon the petitioner and any notice to Jeet Singh has no concern with the petitioner. A perusal of the Khasra relating to the land in dispute shows that Sher Singh ahs been recorded alongwith Jeet Singh, but notices have not been issued to Sher Singh. Section 4 (2) of the U. P. Public Premises (Eviction of Unauthorized) Occupants, Act, 1972 also requires that while initiating proceedings under section 4 of the Act, notice shall also specify the grounds on which the order of eviction was proposed to be made. Since no notice has been issued to the petitioner, in absence of any notice to the petitioner, there was no occasion to invite objection on the ground on which the eviction had been sought.

4. In view of the aforesaid facts and circumstances, the petition is allowed. The matter is sent back to the Prescribed Authority for issuing a fresh notice to the petitioner. After the notices are issued, opportunity shall be afforded to the petitioner to file objections. Final order under section 5(1) of the Act shall be passed after hearing both the parties.

(Rajesh Tandon, J.)
2.9.2004

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